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September 5, 2017

Mr. Larry Gottesman  
National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

**Submitted online**

**RE: Freedom of Information Act Request**

Dear Mr. Gottesman:

This is a request for records under the Federal Freedom of Information Act (FOIA), 5 U.S.C. § 552 and applicable regulations. If you are not the appropriate official to handle this request, please forward this letter to the appropriate person, and let us know that you have done so. The Humane Society of the United States (HSUS) is requesting the following records related to Environmental Protection Agency (EPA) toxicity test requirements and recommendations to assess risks of pesticide exposure and potential impact on Endangered Species Act (ESA)-listed species:

1. Any formal or informal policies or guidance (currently in effect) of EPA, regarding when, how, or why the use of animal test data is required or recommended to aid in making a pesticide “effects determination” for an ESA-listed species or its critical habitat (except that such records readily publicly accessible on EPA’s website need not be produced);
2. Any internal correspondence of EPA, within the last three years, regarding when, how, or why the use of animal test data is required or recommended to aid in making a pesticide “effects determination” for an ESA-listed species or its critical habitat;
3. Any correspondence between EPA and the U.S. Fish and Wildlife Service or National Marine Fisheries Service (the Services), within the last three years, regarding when, how, or why the use of animal test data is required or recommended to aid in making a pesticide “effects determination” for an ESA-listed species or its critical habitat;
4. Any pesticide “effect determinations,” biological assessments, or biological opinions, issued within the last three years, created by EPA or in EPA’s possession, that involve the use of animal test data

(and any related correspondence, findings, or other records); and

5. The complete administrative record for the case *Defenders of Wildlife v. Jackson*, No. 1:09-cv-01814, which case was filed in the Federal District Court for the District of Columbia on September 23, 2009.

For this request, the term “records” includes, but is not limited to, correspondence of any kind, memoranda, letters, notes, schedules, electronic mail, telephone logs, minutes of meetings, work papers, reports, studies, photographs, videos, DVDs, CDs, or data. If any information is withheld, please identify all such information with specificity and state the exemption under which the information is being withheld. 5 U.S.C. § 552(b). Additionally, for this request, the term Environmental Protection Agency (EPA) includes any divisions or offices, including but not limited to its Office of Pesticide Programs (OPP), Environmental Fate and Effects Division (EFED), or regional offices.

FOIA provides that if portions of a document are exempt from release, the remainder must nevertheless be segregated and disclosed. 5 U.S.C. §552(b); 40 C.F.R. § 2.104(f). Please provide us with all non-exempt portions of any otherwise exempt records. As FOIA requires, please explain any redactions by reference to specific FOIA exemptions. 5 U.S.C. §552(b).

Please send all responsive records to [vkatrinak@humanesociety.org](mailto:vkatrinak@humanesociety.org) or 700 Professional Drive, Gaithersburg, MD 20879.

### **Fee Waiver Justification**

FOIA provides for a fee waiver when disclosure of the documents is in the public’s interest. Specifically, FOIA states that:

Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l). The HSUS believes that this request satisfies the criterion for a fee waiver or reduction. The HSUS is a 501(c)(3) non-profit organization dedicated for over five decades to the protection of animals. This is a matter of legitimate public interest and concern. The disclosure of the requested records will primarily benefit the general public by helping the public better understand the type of animal tests EPA requires or recommends in order to protect ESA-listed species—thereby contributing to the public’s understanding of the operations and activities of the government.

The information obtained will be disseminated to the general public. The HSUS has devoted substantial time and resources to monitoring activities of the federal government and keeping the public informed of these activities, as well as educating the public about EPA’s animal testing requirements and recommendations. The HSUS disseminates information to the general public through various sources including its websites, media outlets, litigation, legislation and public education. For example, The HSUS has published a webpage to inform the public about

the status of eliminating animal use for the 6-pack of toxicity tests used by EPA to assess safety of pesticides.<sup>1</sup>

The use of this information will help The HSUS further its function as a disseminator of information on animal testing undertaken to assess the safety of pesticides. Finally, disclosure of the requested records is not primarily in the commercial interest of The HSUS; rather, the primary purpose of this request is to obtain and disseminate information about policies and activities relating to EPA's use of animal test data and efforts to reduce animal testing to assess pesticide safety, not to commercially profit from this information.

Aside from its qualifications for a complete fee waiver, as The HSUS is a "representative of the news media," it should be charged no more than reasonable duplication fees, minus the charge for the first 100 reproduced pages, and should not be charged search or review fees. 5 U.S.C. § 552 (a)(4)(A)(ii)(II); 40 C.F.R. § 2.107(c)(iii), (d)(1). The definition of "representative of the news media" has a well-accepted interpretation which stems from the District of Columbia Circuit:

A representative of the news media is, in essence, a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience.

*Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *see also* 40 C.F.R. § 2.107(b)(6) ("Representative of the news media or news media requester means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public"). The HSUS has extensive and well-exercised means to keep the public informed on the operations and activities of the United States government. It does not merely obtain information and then contact members of the press to relate that information; rather, it independently analyzes the information, drafts its own reports and articles on the issues, and disseminates the information broadly through its own publications to members and other interested persons. As an example, The HSUS compiled information on its website detailing the universities that purchase dogs and cats from random source Class B dealers. The information was obtained from a variety of sources including freedom of information requests submitted to state agriculture departments and individual research institutions.<sup>2</sup>

In the course of carrying out its educational and other charitable public interest activities, and as a member of the news media, The HSUS requests that charges for searching, reviewing, and duplicating be waived. Should there be any difficulty with the fee waiver, please contact The HSUS by phone at 240-449-7590 or e-mail at [ykatrinak@humanesociety.org](mailto:ykatrinak@humanesociety.org) so that The HSUS may decide whether to pay the fees or to appeal the denial of the request for waiver or reduction.

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<sup>1</sup> The Humane Society of the United States. *It's time for EPA to End Pesticide Cruelty*. Retrieved July 25, 2017, from: [http://www.humanesociety.org/issues/cosmetic\\_testing/end\\_pesticide\\_cruelty.html](http://www.humanesociety.org/issues/cosmetic_testing/end_pesticide_cruelty.html)

<sup>2</sup> The Humane Society of the United States. *Data on U.S. Research Institutions and Universities that Buy Class B Dogs and Cats*. Retrieved July 25, 2017, from: [http://www.humanesociety.org/issues/pets\\_experiments/tips/animal\\_dealer\\_university\\_data.html?credit=web\\_id93480558](http://www.humanesociety.org/issues/pets_experiments/tips/animal_dealer_university_data.html?credit=web_id93480558)

This request is a matter of great concern to The HSUS, and thus your prompt and complete report is appreciated. If it is not possible to promptly comply with all portions or aspects of this request, please provide a partial response with materials readily available. Do not hesitate to call me should you have any questions concerning this request.

Thank you for your prompt attention to this matter. We look forward to receiving your reply within twenty business days as required by law. 5 U.S.C. § 552(a)(6)(A)(i); 40 C.F.R. § 2.104(a).

Sincerely,

A handwritten signature in cursive script that reads "Vicki Katrinak". The signature is written in dark ink on a light-colored background.

Vicki Katrinak  
Program Manager, Animal Research Issues